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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT CARLOS GOMEZ,

Defendant and Appellant.

E069798

(Super.Ct.Nos. INF1601771 &
INF1700893)

OPINION

APPEAL from the Superior Court of Riverside County. Anthony R. Villalobos,
Judge. Affirmed.

Robert V. Vallandigham, Jr., under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In Riverside County Superior Court case No. INF1700893, a jury convicted defendant and appellant, Robert Carlos Gomez, of possessing a firearm after previously being convicted of a felony (count 1; Pen. Code, § 29800(a)(1))¹ and possessing ammunition after previously being convicted of a felony (count 2; § 30305, subd. (a)). As to the count 1 offense, the jury additionally found defendant was personally armed with a firearm when he committed the offense. (§ 667, subd. (e)(2)(C)(iii).) The court thereafter found defendant had suffered two prior strike convictions (§§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)) and three prior prison terms (§ 667.5, subd. (b)).

In Riverside County Superior Court case No. INF1601771, another jury convicted defendant of evading a police officer with wanton disregard for safety. (Count 2; Veh. Code, § 2800.2.) Defendant thereafter admitted suffering two prior strike convictions (Pen. Code, §§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)) and three prior prison terms (Pen. Code, § 667.5, subd. (b)). After striking one of the prior strike convictions, the court sentenced defendant to an aggregate term of 11 years eight months of incarceration.

After defendant filed notices of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the facts and a statement of the case. We affirm.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

I. FACTUAL AND PROCEDURAL BACKGROUND

In case No. INF1700893, Bryce Eberline testified that in May 2017, he believed his roommate and former Narcotics Anonymous sponsor, Mike Zibell, whom he had not seen in three days, had relapsed; Eberline was attempting to get Zibell to return home. A former roommate of Eberline told him that Zibell was at a gas station in Palm Springs. Eberline went to the gas station where he saw Zibell and defendant in Zibell's van. Both appeared to be under the influence of drugs. Eberline got into an argument with Zibell; Eberline told defendant to exit the vehicle. Defendant pulled out a gun.

Eberline stepped away, got into his truck, and backed up. Zibell got into the driver's seat of his van and drove off. Eberline called 911 and followed Zibell.

Zibell testified that Eberline was his friend and roommate. Zibell had been sober for four and a half years. He met defendant at a home three days prior to the incident when Zibell was looking for drugs. He spent the ensuing three days using drugs. Defendant had shown Zibell defendant's gun a number of times during that time.

On the day of the incident, Zibell had been using methamphetamine with defendant. Zibell drove he and defendant to the gas station. Eberline showed up; he was very angry at Zibell and wanted him to return home with Eberline. Eberline asked defendant to exit the vehicle; Zibell saw a gun between defendant's legs. Zibell drove off, but was eventually pulled over by the police.

A sheriff's deputy testified he responded to a call regarding the brandishing of a weapon on March 14, 2017. He conducted a traffic stop of Zibell's vehicle. During a search of the vehicle, officers found a loaded semiautomatic pistol and additional rounds of ammunition in an Altoids tin. At an in-field lineup, Eberline identified defendant as the individual who brandished the gun at him.

In case No. INF1601771, the victim, defendant's wife, testified that she called the police on October 7, 2016, because defendant had taken her Toyota Corolla. She had purchased the vehicle from an account in her name, to which defendant did not contribute; she registered the vehicle in her name alone.

The victim considered the bank account community property. She intended to make it a joint account. The money in the account was "our money." The victim never added defendant's name to the vehicle's registration because she saw no need to do so. Defendant had his own keys to the car.

Prior to October 7, 2016, the victim and defendant had gotten into an argument; defendant left for a few days. On October 7, 2016, they got into another argument; defendant took her car. The People played a recording of the 911 call placed by the victim; in it, the victim said defendant "stole" the car.

A sheriff's deputy responded to the victim's 911 call. She told him defendant and she were estranged; she referred to defendant as her "ex[-]boyfriend" and the "father of her children." The victim said she was in defendant's house, heard him open the door, and saw him enter. They began to argue; he went to take the keys to the vehicle; she told

him not to. Defendant took the keys and exited the house toward the vehicle. He drove off in the vehicle.

The victim said defendant had “never had access to the vehicle, never driven it or borrowed it and ha[d] never had keys to that vehicle.” She “demanded prosecution for the theft.”

Another officer responding to the reported vehicle theft saw the car and attempted to conduct a traffic stop. The driver refused to stop; the officer activated his sirens; the driver began traveling at speeds of up to 100 miles per hour. The officer lost sight of the vehicle as it exited the freeway. Less than a minute later he regained sight of the vehicle; it was on the shoulder of the road stuck in the dirt. The driver’s side and passenger side doors were open. Officers were unable to locate the driver.

The People charged defendant by information in case No. INF1601771 with theft and unlawful driving or taking of a vehicle (count 1; Veh. Code, § 10851) and fleeing from a pursuing officer (count 2; Veh. Code, § 2800.2). The People additionally alleged defendant had suffered two prior strike convictions (Pen. Code, §§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1)) and three prior prison terms (Pen. Code, § 667.5, subd. (b)).

After trial, defense counsel moved to dismiss the count 1 charge on the basis that there could be no theft of community property. The People argued there was evidence that the vehicle was the victim’s separate property and, even if deemed community property, the evidence supported the contention that defendant intended to permanently

deprive the victim of the vehicle. (*People v. Llamas* (1997) 51 Cal.App.4th 1729, 1739-1740 [a spouse may be held liable for the theft of a community property asset, but not when the spouse only intends to temporarily deprive the other spouse of that asset].) The court observed, citing *Llamas*, that if the People argued defendant's intent was to permanently deprive the victim of the vehicle, then there was sufficient evidence to proceed. Nonetheless, the court noted that it believed the vehicle was community property. The court denied the motion to dismiss.

The parties then argued whether the jury or the court should decide if the vehicle was community or separate property. The court repeatedly noted that it believed the vehicle was community property. The following day, the People indicated a willingness to stipulate that the vehicle was community property. The court indicated a willingness to reconsider the section 1118.1 motion: "Once I had a chance to sit back and look at all my notes, I should have granted the [section] 1118[.1] [motion]." The court stated: "I think the [section] 1118[.1] [motion] should have been granted. I think this was community property And he can't steal community property." Thus, the court dismissed the count 1 charge pursuant to section 1118.1 and ordered defendant acquitted on that charge.

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

RAPHAEL
J.